HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.93 of 2007

Between:

Chief General Manager,
Local Head Office, State Bank of India,
Hyderabad and two others. …Appellants

And

G. Venkateshwarlu

…Respondent

:: J U D G M E N T ::

Counsel for the appellants : Ms. V. Uma Devi

25th April, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 10-10-2006 passed by the learned Single Judge in Writ Petition No.18292 of 1995 whereby he declared that respondent – G. Venkateshwarlu is eligible to be appointed as Messenger in the services of the State Bank of India (for short, 'the bank').

The respondent was engaged as Messenger in Nandikotkur Branch of the bank in 1975. He worked in the services of the bank in different capacities for different periods, the details of which are given below:

Messenger (Full Wages)	118 days
Watch Man (Full Wages)	144 days
Sweeper cum Water Boy (3/4 wages)	15 days
Watch Man (3/4 wages)	9 days

In response to an advertisement issued by the competent authority of the bank in 1988 for considering the cases of ex-temporary employees for permanent appointment, the respondent submitted application dated 25-8-1988 clearly mentioning therein that he had studied 10th Class in Multi-purpose High School, Nandikotkur during 1967-68 and passed the examination conducted by the school and that he had studied 11th and 12th classes during the years 1968-69 and 1969-70. The respondent was interviewed on 18-7-1989. His name was placed at No.1 in the panel of selected candidates. However, he was not offered appointment on the premise that by having passed 10th class examination, he has become ineligible to be appointed as Messenger. The representation made by him was rejected vide letter dated 30-7-1993.

The respondent challenged the decision of the bank in Writ Petition No.18292 of 1995. In the affidavit filed by him, the respondent averred that he had not passed Matriculation examination and, therefore, he was eligible for appointment as Messenger and the rejection of his claim is vitiated by arbitrariness and violation of Articles 14 and 16 of the Constitution.

In the counter filed on behalf of the appellants,
Shri A. Mahadevan, Deputy General Manager, State Bank of India, Zonal Office, Hyderabad admitted the factum of the respondent's selection, but averred that his claim was rejected because he was not qualified for the post of Messenger. Shri Mahadevan relied on order dated 27-9-1995 passed in Writ Petition No.13127 of 1988 and pleaded that the petitioner (the respondent herein) was not eligible to be appointed as Messenger because he had passed 10th class examination. According to Shri Mahadevan, the respondent's empanelment was a mistake and, therefore, the competent authority did not commit any illegality by refusing to appoint him as Messenger.

The learned Single Judge noticed the qualifications specified in

the advertisement issued by the bank and held that the petitioner is eligible to be appointed as Messenger because he had not passed Matriculation examination. The learned Single Judge referred to the judgment of the Division Bench in **Ch. Papanna v. The Personnel Manager, SBI**[1] on which reliance was placed by the counsel for the bank and distinguished the same by recording the following observations:

> "In the aforesaid judgment the candidate passed SSC examination and a pass in SSC examination is a higher educational qualification as per the qualification prescribed for the post of Messenger but in the instant case, the qualification prescribed in the notification issued for the appointment of Messenger is as follows:
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> "**Educational Qualification**:
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> Candidates should have been non-matriculate on the date of their temporary appointment. Candidates who had passed 8th class but are not matriculate will be considered for Messengerial positions others will be considered for non-Messengerial positions. However, if a candidate has acquired higher educational qualification by passing High School/SSC/Matriculation/other equivalent examination in 2nd or 3rd division only after having ceased to be in the Bank's temporary service he will be deemed eligible for availing the chance provided the higher qualification has not been used by him to secure employment elsewhere."
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> Admittedly, the petitioner neither passed SSC or Matriculation examination nor secured first division in the 10th class studied in the multipurpose high school. Therefore, I am of the opinion that the aforesaid judgment of the Division Bench has no application to the facts of the instant case, as the petitioner did not possess higher educational qualification. The letter dated 15.04.1993 addressed by the Principal of the Government Junior College, Nandikotkur, Kurnool District to the Deputy General Manager, Personal Section, Zonal Office, Hyderabad, goes to show that on a request of the respondent bank by letter dated 11.02.1993 to furnish the study particulars

of the petitioner, the Principal vide his letter stated that the petitioner studied from VI class to XII class in their institution and though he appeared for XII class examination in 1969-70 he was not promoted from XI class to XII class as per records. The word promoted was not written in the Institution records or in the candidates H.S.C. register but the petitioner appeared the HSC examination in 1970 and failed in the examination. It was also clarified that as per the rules of Board of Intermediate Education XI class student of H.S.C course is not eligible for admission into Intermediate First Year and so, XI class or H.S.C. is not equivalent to present S.S.C.

In view of the aforesaid facts and circumstances of the case, I am of the opinion that the petitioner has not acquired any higher educational qualification and even according to the aforesaid notification the petitioner is eligible for absorption in the subordinate cadre. Therefore, the petitioner was rightly empanelled in the selection list but without any justification he was not given appointment.

Ms.V. Uma Devi invited our attention to settlement dated 17-11-1987 entered into between State Bank of India and All India State Bank of India Staff Federation and the advertisement issued by the bank to show that only non-matriculate temporary employees were eligible to be appointed as Messengers and argued that the learned Single Judge committed a serious error by declaring the respondent eligible for appointment as Messenger despite the fact that he had passed 10th class examination conducted by the school. In support of her argument, Ms.V. Uma Devi relied on the judgment of the Division Bench of this Court in **Ch. Papanna v. The Personnel Manager, SBI** (supra).

We have considered the argument of the learned counsel, but have not felt impressed. A reading of Annexure-B appended to settlement dated 17-11-1987 shows that the age and educational qualification prescribed for appointment of ex-temporary employees were as under:

Age and Educational Qualification:

At the time of initial temporary appointment, they should have

been within the age limit of 18 – 26 years of age (with permissible relaxation in case of SC/ST and Ex-servicemen candidates and physically handicapped persons etc.) and possess educational qualification of VIII class pass but less than matriculation for messengerial posts and literates for other posts, and A-I performance/record in military service (in case of watch and ward staff).

Paragraphs (a) and (b) of the relaxation clause incorporated in Annexure-B read as under:

"**Relaxation:**

(a) Age:

Temporary employees in subordinate cadre, who were within the prescribed age limits at the time of initial temporary appointment and have become overaged after their services were dispensed with may be given suitable relaxation in age as is warranted in each case.

(b) Educational qualification:

Temporary employees, who possessed educational qualification as per the Bank's norms during temporary service and after termination of their temporary appointment in the bank have acquired higher educational qualification by passing High School/SSC/Matriculation or other equivalent examination in 2nd or 3rd division and are not intermediate/graduate etc. and are not eligible for clerical appointment and have not used the said higher qualification to secure employment elsewhere either working as such or have ceased to work, may be given relaxation and be considered eligible for being given a chance for permanent along with other candidates."

An analysis of the above reproduced qualifications and the notification pursuant to which the respondent was selected and empanelled for appointment as Messenger shows that those who were non-matriculate on the date of their temporary appointment were eligible to be considered for appointment. Those who acquired higher educational qualification by passing High School/ SSC/Matriculation/other equivalent examination in second or third division after having ceased to be in the bank's temporary service

were also treated eligible subject to the condition that they had not taken advantage of higher qualification for securing employment elsewhere.

The facts of this case show that the respondent had studied and passed 10th class examination conducted by Multi-purpose High School, Nandikotkur in 1967-68. This was not treated by the bank as equivalent to High School/SSC/ Matriculation and that is why he was engaged as Messenger in the year 1975. If the bank had treated 10th class examination conducted by the school as equivalent to High School etc, then the respondent would not have been appointed as Messenger. It is neither the pleaded case of the appellants nor Ms.V. Uma Devi argued that the respondent was ineligible to be appointed as Messenger in the year 1975 or that his appointment was an end product or misrepresentation or even mistake. Therefore, the decision of the bank not to appoint the respondent on the premise that he was not a non-matriculate on the date of temporary appointment was clearly erroneous and we do not see any reason to upset the declaration granted by the learned Single Judge that the respondent was eligible for appointment as Messenger.

We are further of the view that on a plain reading of the clause relating to educational qualification incorporated in the advertisement, the respondent cannot be treated ineligible for appointment as Messenger because on the date of appointment in 1975, he has not passed Matriculation examination.

As a corollary, it must be held that by refusing to appoint respondent No.2 as Messenger despite the fact that he was duly selected, the management of the bank acted arbitrarily and violated his fundamental right to equality guaranteed under Article 16 of the Constitution.

The judgment of the Division Bench in **Ch.Papanna**'s case (supra) has been correctly distinguished by the learned Single Judge because the petitioner of that case had passed SSC examination on

the date of his initial appointment and as per the policy decision taken by the bank, he was ineligible to be considered for appointment of the post of Messenger. Likewise, the judgments of two coordinate Benches in Writ Appeal No.448 of 2003 decided on 18-3-2003 and Writ Appeal No.826 of 2002 decided on 22-6-2005 are clearly distinguishable because in both the cases it was found by this Court that the candidates were Matriculates and, as such, they were not eligible to be considered for appointment as Messengers.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.155 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, C.J.

25th April, 2007

C.V. NAGARJUNA REDDY, J.

svs

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[1] 1996 (2) ALT 358 (D.B.)